

Appl. No.: 10/539,730

Amendment dated July 24, 2006

Applicants' Response to the Office Action mailed April 24, 2006

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### REMARKS/ARGUMENT

#### Amendments to the Specification

The paragraph on page 3, lines 5-23, of the specification is amended to correct formula (III) which was intended to depict an hydroxycarboxylic acid, in particular citric acid. Support for this amendment is first found in the title of the invention and the first paragraph, among numerous others, which refer to hydroxycarboxylic acids. Specific support for this amendment is found in the last two sentences of the subject paragraph, which make it clear that the formula (III) was intended to depict citric acid which has an hydroxy group in the 2 position. These two sentences state: "The percentage content of free *citric acid* may be up to 20%, based on the mixtures. However, the mixtures preferably contain less free *citric acid*, preferably less than 10%." (Italics added). Accordingly entry of the foregoing amendment to the specification is respectfully requested.

#### Amendments to the Claims

Process claim 11 is amended to incorporate dependent claims 12 and 16., the latter of which is directed to specific hydroxycarboxylic acids including citric acid.

Composition claim 19 is amended to correct formula (III) and to replace the ratio of monoesters to diesters with the percentage of monoesters, diesters and triesters in original claim 24.

Cosmetic composition claim 25 is amended to correct formula (III) and to replace the ratio of monoesters to diesters with the percentage of monoesters, diesters and triesters in original claim 29.

Support for new claims 31 and 32, dependent upon claim 25 and drawn to the acid, hydroxy, ester and saponification values, is found in the specification at page 4, lines 4-8.

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Support for new claims 33 and 34, dependent upon claim 19 and drawn to the acid, hydroxy, ester and saponification values, is found in the specification at page 4, lines 4-8.

Accordingly, applicants submit that the amended and new claims are fully supported by the original specification and claims and add no new matter. Entry of the amendments and continued examination based on the same is respectfully requested.

#### Election of Inventions

Applicants provisionally elect the examiner's Group III, claim 25-30, drawn to class 424/70.1, with traverse.

Applicants respectfully submit that declaring a lack of unity of invention based upon a specific portion of the claimed subject matter as not being a "special technical feature" because it is anticipated, puts the cart before the horse. Based on the applicants' disclosure, the allegedly anticipated feature is indeed an element of each of the examiner's groups, and the groups as claimed represent a unified invention. Formula (III) of component (B) in original claim 25 is the same as formula (III) of original claim 19. (This remains true for claims 25 and 19 as amended herein.) Applicants submit that this formula (III) is indeed the same "special technical feature" whether it is deemed patentable or not. (Applicants submit that selection of the parameters of original process claim 11 according to dependent claims 12-18 also results in the mixtures of Formula (III). Accordingly, the "special technical feature" of applicants' invention is likewise embodied in the process claims 11-18.)

Since a primary purpose of a restriction requirement for a US-originated or US Paris Convention application is to limit the search field, the examiner would not carry out a search prior to formulating a restriction requirement. It is therefore not clear to the undersigned attorney for applicants why the USPTO sees fit to use the references cited in an International Search Report in a PCT application in order to come to a different view of unity of invention than the International Search Authority. Thus, applicants submit that the subject restriction requirement

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is contrary to the intent of the PCT unity of invention practice and to the USPTO restriction practice itself.

For these reasons, withdrawal of the requirement for election between the examiner's Groups I, II and III and examination of all pending claims is therefore respectfully solicited.

The Examiner is requested to telephone the undersigned attorney if any further questions remain which can be resolved by a telephone interview.

Respectfully submitted,

Ansgar Behler, *et al.*

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July 24, 2006

(Date):

By: \_\_\_\_\_

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